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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,087	02/11/2004	Victoria Ann Kanitz		1604
7590	02/21/2006		EXAMINER	
LOWE HAUPTMAN & BERNER, LLP			HANEY, RICHALE LEE	
1700 DIAGONAL ROAD			ART UNIT	PAPER NUMBER
SUITE 300				3765
ALEXANDRIA, VA 22314			DATE MAILED: 02/21/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/775,087	KANITZ, VICTORIA ANN	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 08 December 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 10-34 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 10-34 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 11 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 10/28/2005.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

***Response to Amendment***

The amendment of 10/28/2005 and the amendment of 12/01/2005 have been received. Claims 1 – 9 have been cancelled, claims 13-15, 19-20, 23-28 and 30 were previously presented, claims 10-12, 16-18, 21-22, 29, and 31 have been amended, and claims 32-34 have been added. Claims 10 – 34 are pending.

***Claim Objections***

1. Claim 11 is objected to because of the following informalities: there appears to be an error of syntax regarding the recitation “intermediated.” Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

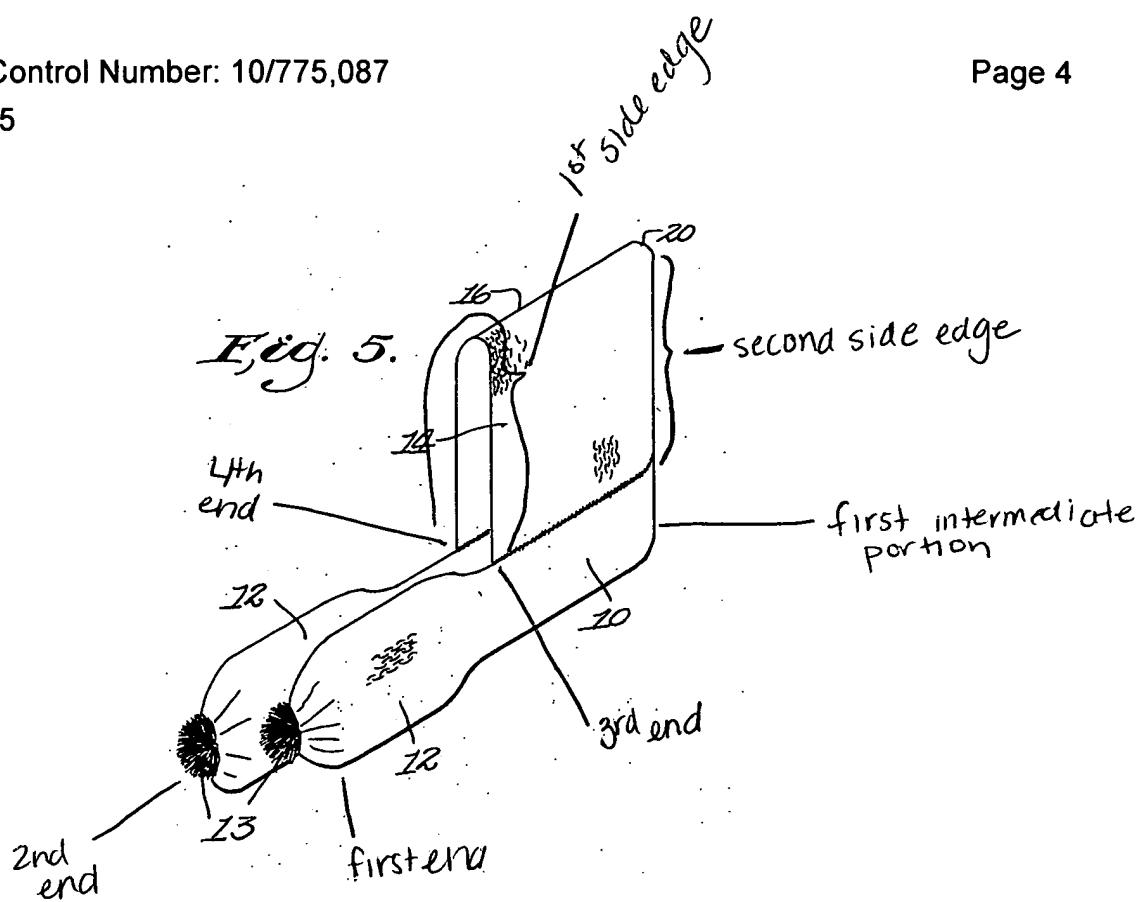
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10, 11, 13, 14, 17, 21 – 26, 30 and 32 – 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenberg (US 2,083,616). The device of Rosenberg shows a first two sided fabric member (10) covering at least a portion of a neck of a person, wherein the first fabric member extends between a first end and a second end (Figure 1), further comprising a second, two sided fabric member configured to cover at least a portion of a head of a person, wherein the second fabric

member (14) extends between third end and a fourth end (Figure 2) so that it covers at least a portion of the wearer's ears (Figure 6). The second fabric member is folded and stitched (17) to provide a rearward opening for receiving the head of the wearer so that a third and fourth ends (15) are attached at an intermediate portion between the first and second end in a spaced apart predetermined relationship (Figure 5), when in use the opening is located adjacent the back of the wearer's head (Figure 6). The intermediate portion of the first fabric member is configured to cover the back of the wearer's neck (Figure 5). The second fabric member has a first side edge opposing a second side edge which faces the first intermediate portion of the fabric member, the first non-stitched side edge has a greater length than the second stitched side edge and faces the opening forming an oblique angle greater than 90 degrees when in an operative position. The third and fourth ends have a first width between a first edge and second edge sized for covering the wearer's ears.



3. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Grant (US 3,088,119). Grant discloses a first means having a first portion (A) sized to cover at least a rear portion and side portion the wearer's neck (Figure 3), a second means (B) having a third and fourth portion sized to cover each ear of the wearer (Figure 5) without covering at least a portion of a predetermined rear portion of the head. It is noted that the scarf has a predetermined size and therefore would only cover a predetermined portion. The second means is connected to the first means in two places that are separated by a predetermined spacing along the first means. The second means portion has an edge (Figure 6) that is adjacent to the first means, so that the edge and the first portion correspond to define a rear opening (the portion in which the wearer's head is inserted) between the first and second means (Figure 5).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

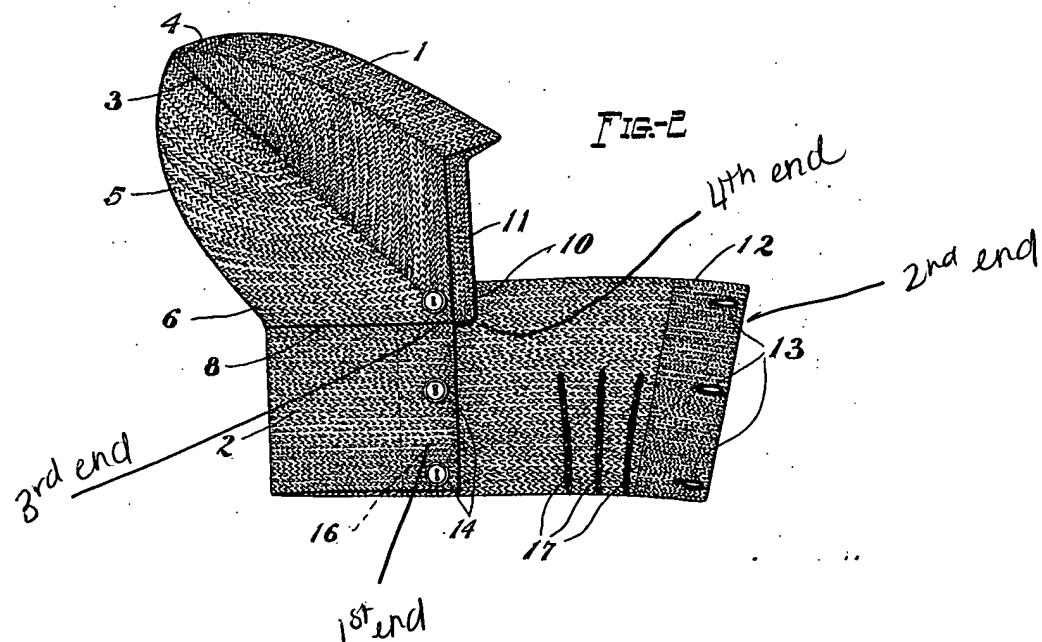
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 12 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Williams (US 3,668,707). The device of Rosenberg substantially discloses the claimed invention but lacks a first and second width wherein the second intermediate width is less than the width of the ends. The device of Williams shows an intermediate portion sized for covering the ears having a first width and third and fourth ends having a second width, wherein the first width is less than the second width (Figure 7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rosenberg by changing the width of the third and fourth ends to be greater than the intermediate portion as shown by Williams in order to provide greater coverage for the wearer.

6. Claims 15, 16, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Murphy (US 6,065,156). The device of Rosenberg substantially discloses the claimed invention lacks an attachment connecting a first portion to a second portion of the first fabric member, comprising a hole sized to receive an end portion. The device of Murphy shows a first fabric member neck covering having an attachment means comprising a hole (10 formed by a knot pleat) on the inner portion of a first portion (4) for receiving a second end portion (3) of

the first fabric member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Rosenberg by incorporating a hole into an inner portion of the first fabric member in order to provide the user with a means for adjusting the size of the neck covering.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Esten (US 2,039,478). The device of Rosenberg substantially discloses the claimed invention lacks a substantially uneven distance from a third end to one a first or second end and a fourth end to one of a first or second end. The device of Esten shows a first fabric member having a first and second ends and a second fabric member having third and fourth ends, wherein the distance between the third end and the first end is substantially less than the distance between the fourth end and the second end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Rosenberg by changing the position of the third and forth ends in order to obtain a face covering portion having a snug fit.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney  
Patent Examiner  
Art Unit 3765  
February 14, 2006

RLH



JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700